IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5622 OF 1998

Shri Deepak Shreerang Shinde)
At Post Bhivadi, Taluka Purandar)
Dist. Pune.)..PETITIONER

Versus

1. State of Maharashtra)
through its Secretary)
Tribal Development Department)
Mantralaya, Mumbai-400 032.)
2. Chairman, Committee for)
Scr;utiny and Verification)
of Tribe Claims, Maharashtra)
State, Pune-411001.)
3. Registrar, Yeshwantrao Chavan)
Academy of Development)
Administration, Yashada,)
Pune-411 007.)..RESPONDENTS

Mr. R.K. Mendadkar with Ms. Helen N. Koli Mandlik,
for the Petitioner.
Mr. C.R. Sonawane, AGP for Respondent No.1 and 2.

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.
DATE : 24th February, 2005

ORAL JUDGMENT (PER F.I. REBELLO, J.):

. The petitioner claimed as belonging to Thakar, a notified S.T. in the State of Maharashtra. The Committee verifying the petitioner's caste claim rejected his claim as belonging to Thakar S.T. Aggrieved the petitioner has filed the present petition.

2. At the hearing of this petition on behalf of the petitioner learned Counsel submits as under:-

(i). That once the petitioner had produced the documents to show that he belongs to Thakar S.T. and

the same is found in the Presidential Notification it was not open to the Verifying Committee to make further enquiries as to Tribal characteristics of the petitioner. Having done so the Committee misdirected itself and consequently the impugned order is liable to be set aside.

(ii) It is then set out that the Committee at the time of oral hearing recorded a finding that the information given by the petitioner as to tribal characteristics was bookish and, thereby rejected the same. It is submitted that the Committee did not based on the information supplied hold that the petitioner belonged to any other caste or tribe. In these circumstances the documentary evidence produced by the petitioner ought to have been accepted.

(iii) It is lastly submitted that the Committee misdirected itself in holding that Ka-Thakar/Thakur, Ma Thakar/Thakur are peculiar divisions amongst the Thakar/Thakur S.T. It is pointed out that in the Presidential Notification in the State of Maharashtra under Entry No.44 Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar have been shown as independent tribes as there is coma after every entry. For all the aforesaid reasons the learned Counsel submits that the order of the Committee be set aside and the Caste validity certificate be issued to him. Learned Counsel relied upon the judgments which will be adverted to in the course of discussion.

3. On the other hand on behalf of the respondents learned A.G.P. points out that merely because the documents show the caste tribe as Thakar by itself is not conclusive. At the highest it raises a strong presumption in favour of the entry and in favour of the candidate. This could be decided by an enquiry as contemplated in the guide-lines set out in Madhuri Patil's judgment and also on verifying the tribal characteristics of the petitioner at the oral hearing which is given.

4. We have heard learned Counsel for the parties. The first question that we have to answer is whether because the documentary evidence produced by the petitioner show the tribe as Thakar in the various documents, is by itself conclusive that he belongs to thakar Scheduled Tribe. For that submission learned Counsel has sought to rely on the judgment of the Apex Court in the case of **State of Maharashtra Vs. Milind & Ors., (2001) 1 SCC 4 and more specifically to the** conclusion as set out in paragraph 36. Considering what is set out in paragraph 37 of the judgment it is not possible to accept the contention as advanced on behalf of the petitioner. A perusal of the position of law as set out therein would only show that the Court or Tribunal cannot enquire whether any other caste, sub-caste, tribe or sub-tribe is synonymous with the entry in the Presidential Notification. That is the ratio of the judgment of the Apex Court in Milind &

Ors. (supra). Learned Counsel also sought to place reliance on the judgment of co-ordinate Bench of this Court firstly in the case of **Pandurang Rangnath Chavan vs. State of Maharahtra & Ors. 1998(2) Mh. L.J.806**. All that the learned Division Bench has set out therein is the reiteration of the law as declared by the Apex Court in the judgment of Milind (supra). Next reliance is placed on the judgment of **Chandrakant Bajirao Shinde vs. State of Maharashtra & Ors., 2003 (2) Mh.L.J., 471,**. There also the same issue which has been decided by the Apex Court in Milind (supra) was in issue. That judgment, therefore, would also be of no assistance to the petitioner. To the same effect the unreported judgment of another Division Bench of this Court in Bharatbhushan Manikrao Wankhede vs. The Executive Magistrate, Amalner, Dist. Jalgaon & Ors.,in Writ Petition NO.4182 of 1996 decidd on 20th July, 2004. It is clear from the judgments that they are of no assistance for the submission which was made on behalf of the petitioner herein.

5. On the other hand in Prabhu Narayan Survase vs. State of Maharashtara & Ors., LJ Soft 2004 (11) 110, where one of us (Rebello, J.) was party this Court has noted that merely because in the school certificate the tribe is shown will not be by itself be conclusive though it raises a strong presumption it is open to the Verification Committee from the Home Study Report as well as on examination of Tribal characteristics to arrive at a conclusion as to which

caste or tribe the petitioner belongs to. Another Bench of this Court in an unreported judgment in the case of **Kum. Suchita Ramdas Bhuyar vs. State of Maharashtra & Ors., in Writ Petition No.2434 of 2003** decided on 5th June, 2003 has also taken the view that it was open to the Committee considering that the word Thakur is also found amongst upper caste to determine whether the candidate belongs to the caste/tribe, based on custom and other tribal characteristics. In the instant case from the order of the Caste Scrutiny Committee it can be noted that the committee has noted that the word Thakar or Thakur is included various categories which also includes various higher castes. Considering the above in our opinion the position of law would be as follows:-

(i) In respect of the documents which are pre-Presidential Notification they would be strong probative value.

(ii) In terms of documents which are post Presidential Notification they would have presumptive value. This presumption can always be rebutted if on the finding of Home Study Report and the enquiry made by the Committee the Committee finds that the candidate before it is unable to satisfy that he belongs to the caste/tribe which he or she claimed, but Tribal characteristics are such that he belongs to some other caste/tribe. The first contention as advanced on behalf of the petitioner therefore, must

be rejected.

6. We may now proceed to consider the second and third contentions which are advanced which can be disposed of together. It is true that the Committee has rejected the information given by the petitioner herein on the ground that it is bookish knowledge and that the petitioner was not aware of Ka-Thakar and Ma-Thakar which are two main division among Thakar/Thakur Scheduled Tribe. We have perused the Presidential Notification and we find that each one of them has been independently considered as belonging to the Scheduled Tribe. Therefore, they are independent Tribes. Presuming they may have some interconnection, however, there is no requirement that the candidate who belongs to Thakar/Thakur S.T. must necessarily be aware Ka-Thakar and Ma-Thakar. To that extent the criticism levelled on behalf of the petitioner by the learned Counsel against the judgment of the Committee has to be accepted.

. The petitioner before this Court had also sought to rely on various documents to show that in the records his relatives their tribe has been shown as Hindu Thakar. These documents though placed before the Committee were neither verified nor has the Committee considered the presumptive or evidenciary value of the said documents. For the aforesaid reasons we are of the opinion that ends of justice would be met if the matter is remanded to the Committee for reconsideration including further home

study report and further consideration of the petitioner's tribal characteristics based on the custom, etc., and the documents which were earlier not considered, but relied upon by the petitioner be considered.

. In the light of that the impugned order dated 17th September, 1998 rejecting the petitioner's tribe claim is set aside. The matter is remanded to the respondent NO.2 to reconsider the matter afresh in the light of what is set out in this judgment within a period of six months from today. The petitioner to appear before the Committee on 14th March, 2005 at 11.00 a.m. Pending the decision by the Committee and for a period of four weeks thereafter the respondent No.3 is directed not to take any steps to terminate the services of the petitioner.

7. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)